

# **REQUEST FOR PROPOSALS (RFP)**

**BEAVER DAM SERVICE AREA  
approximately 9+- acres  
OPERATION OF CONVENIENCE STORE AND FUEL SERVICE FACILITY  
OFF WENDELL H. FORD WESTERN KENTUCKY PARKWAY**

**RFP #063017**



## **FINANCE AND ADMINISTRATION CABINET COMMONWEALTH OF KENTUCKY**

The Finance and Administration Cabinet invites Offerors who have executed similar operations to submit Proposals for the:

**Beaver Dam Service Area  
675 Western Kentucky Parkway  
Beaver Dam, Ohio County, Kentucky 42320**

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## **I. Intent**

### **Purpose of this Request for Proposals:**

The Finance and Administration Cabinet ("FAC"), the Kentucky Transportation Cabinet ("KYTC"), Commonwealth of Kentucky ("Commonwealth"), issues this Request for Proposals ("RFP") to convenience store and fuel vendors ("Offeror," "Lessee," or "Vendor") to finance, construct or renovate, and thereafter operate, maintain, and provide specified services with a strong-branded combination convenience store/fuel station at the Beaver Dam Service Area, located at 675 Western Kentucky Parkway, Beaver Dam, Kentucky 42320 ("the Site" or "the Property") and more particularly shown on Exhibit A).

This RFP describes the mandatory and preferred requirements determined to be relevant to the evaluation of a Offeror's Proposal to provide specific services and facilities including a gasoline and diesel fuel sales operation, a general merchandise store, vehicle parking area, and public restrooms.

## **II. General RFP Information**

### **A. Type of Contract**

This document constitutes a Request for Proposals (RFP) to enter into a lease agreement, pursuant to KRS 45A and KRS 56, by and through FAC on behalf of KYTC. The issuance of this RFP in no way constitutes a commitment to award a lease by the FAC, nor a commitment to pay any costs incurred in preparation of a response to this request. Costs of Proposal preparation are not reimbursable, even for the selected Offeror.

The FAC unconditionally reserves the right to withdraw or cancel this RFP and to reject any and all offers at any time and for any reason without recourse. Receipt of Proposal materials by the FAC or submission of a Proposal to the FAC confers no rights up on the Offeror nor obligates the FAC in any manner.

No contract or lease resulting from this RFP can be deemed valid or binding until properly approved and executed by the Secretary of the Finance and Administration Cabinet.

The Offeror shall agree not to refer to the lease award in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the FAC.

### **B. Calendar of Events**

The following schedule is anticipated for the procurement and contract process:

<b>TASK</b>	<b>DATE</b>
Release of RFP	On or about May 4, 2017
Deadline for Written Questions	May 17, 2017
Offeror's Conference	May 31, 2017 at 10:30 a.m. EST (9:30 a.m. CST)

Proposals Due	June 30, 2017 at 10:30 a.m. EST (9:30 a.m. CST)
Oral Presentations	<u>If determined necessary</u> , short list number proposals to no more than three (3) based on score and oral presentations to be scheduled on or by July 12, 2017
Contract Award	Upon signature of Lease by the Secretary of FAC
Finalization of Fit-Up Design (submitted to FAC by Offeror for Approval)	7 days prior to submittal of documents to the Department of Housing, Building and Construction
Offeror Begins Construction/Renovation of Leased Premises	After approval of final fit-up design and upon signature of lease by FAC Secretary
Full Operational Implementation of Contract Terms by Selected Offeror	From the date of execution of lease by FAC Secretary, no later than four (4) months for renovation of the structure or six (6) months for a full demolition to the slab and rebuild.

### C. Offeror's Conference

An Offeror's Conference will be held at the Beaver Dam Service Area site, 675 Western Kentucky Parkway, Beaver Dam, Ohio County, Kentucky 42320 in order to allow potential Offerors an opportunity to ask questions about the RFP and view the site, although the property is being offered as-is. This conference provides the potential Offerors their only opportunity for oral questions. Offerors are encouraged, but not required, to submit written questions up to May 17, 2017. Although a question and answer session will occur, the final, official answer or position of the FAC on any material points will be stated in writing and distributed to all Offerors by addendum after the conference.

Attendance at the Offeror's Conference is optional; RSVP no later than c/o/b three business days prior to the conference date. If there is no interest by any Offeror in attending the conference by that date, then the conference may be canceled. RSVP to the attention of Natalie Brawner, Division of Real Properties, 3<sup>rd</sup> Floor – Bush Building, 403 Wapping Street, Frankfort, KY 40601 (502) 564-2111 or natalie.brawner@ky.gov. Potential Offerors or their representatives who have a disability pursuant to the ADA, for which the FAC needs to make an accommodation, shall notify Natalie Brawner of the need when communicating the RSVP.

#### D. RFP Addenda

Addenda to this RFP may be necessary. No modification, expansion, explanation or deviation from the specifics of this RFP shall be binding on the Offeror or the FAC except those included in a written Addenda, issued prior to receipt of Proposals.

#### E. Restrictions on Communications with Commonwealth Executive Branch Employees

The Commonwealth Buyer named below shall be the sole point of contact throughout the procurement process. All communications, oral and written (regular, express, or electronic mail or fax) concerning this procurement shall be addressed to:

Natalie W. Brawner  
Division of Real Properties  
403 Wapping Street, Third Floor – Bush Building  
Frankfort, KY 40601  
502-564-2111 Fax – 502-564-8108  
Email – [natalie.brawner@ky.gov](mailto:natalie.brawner@ky.gov)

From the issue date of this RFP until a Offeror is selected, and the resulting lease is executed, Offerors shall not communicate with any COK staff concerning this RFP except:

- The Commonwealth Buyer (Natalie Brawner) cited in this RFP
- The Commonwealth representatives during a scheduled Offeror's Conference, which shall be attended by the Commonwealth buyer; or
- Via written questions submitted to the Commonwealth buyer

***The Commonwealth of Kentucky shall reserve the right to reject the Proposal of any Offeror who violates this provision.***

Any agreement or collusion among lease proposers or prospective lease proposers which restrains, tends to restrain, or is reasonably calculated to restrain competition by agreement to propose a lease with certain terms or otherwise is prohibited.

#### F. Issuing Office

This RFP is being issued by the Division of Real Properties, Department for Facilities and Support Services, Finance and Administration Cabinet, on behalf of the COK and KYTC.

#### G. Confidentiality

The Offeror and FAC agree that all information communicated between them before the effective date of the Lease shall be received in strict confidence and shall not be disclosed by the receiving party, its agents, or employees without the prior written consent of the other party. Such material shall be kept confidential subject to the Commonwealth of Kentucky and federal disclosure laws. Upon the signing of the Lease by all parties, terms of the lease become available to the public, pursuant to provisions of Kentucky laws.

#### H. Proposal Guaranty

1. The Offeror's proposal must be accompanied by a certified or cashier's check, made payable to the "Kentucky State Treasurer", in the amount of One Thousand Dollars (\$1000.00). Upon award of a lease contract, the certified or cashier's check of the unsuccessful Offerors will be returned immediately. The certified or cashier's check of the successful Offeror will be returned upon receipt of the performance and payment bonds enumerated herein.
2. In the event a Offeror's proposal is accepted and the Offeror fails to execute the contract documents, including the deed and the lease, within ten (10) calendar days after its receipt by the successful Offeror, the Commonwealth may, at its option, determine that the Offeror has abandoned the project and the amount of the proposal guaranty shall be forfeited to the Commonwealth as liquidated damages, and not as a penalty.

#### I. Performance and Payment Bonds

1. The successful Offeror /Lessee or its assignee shall furnish separate performance and payment bonds to the Lease and include the Commonwealth of Kentucky as an additional insured. The Lessee or its designee shall furnish a performance bond satisfactory to the Lease in an amount equal to one hundred percent (100%) of the renovation project. The Lessee or its designee shall also furnish a payment bond satisfactory to the Lease in an amount equal to one hundred percent (100%) of the project construction contract for the protection of all persons performing labor or furnishing materials, equipment, or supplies for the Lessee or its subcontractors for the performance of the work provided for in this project, including security for payment of all unemployment contributions which become due and payable under Kentucky Unemployment Insurance law.
2. Each bond furnished by the Lessee or its designee shall incorporate by reference the terms of the project as fully as though they were set forth verbatim in such bonds. In the event the project construction contract is adjusted by written document executed by both parties, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount.
3. The performance and payment bonds shall be executed by a surety company authorized to do business in this Commonwealth, and the contract instrument of bonds must be countersigned by a duly appointed and licensed resident agent.

### **III. RELEVANT INFORMATION**

#### **A. General Background Information**

The Wendell H. Ford Western Kentucky Parkway begins in Elizabethtown and ends at I-69 in Hopkins County with a total distance of approximately ninety-eight (98) miles. The Beaver Dam Service Area is located off the parkway with access from the east and west bound lanes in Ohio County between the intersection of the William H. Natcher Parkway (Exit 77) and US 231 (Exit 75).

#### **B. Facility Description**

The Site is approximately 9+- acres and is accessed by entrance/exit ramps from the east and west which are maintained by KYTC. There is no current operation at the site and all improvements on the Property are being offered as-is. There is an approximate eight thousand (8,000) square feet structure with related items from a previous general merchandise store, restaurant, and fuel operation.

KYTC's traffic study from 2013 indicates a per day average of eight hundred twenty-eight (828) visitors from the East bound ramp to the Site and eight hundred forty-four (844) visitors from the West bound ramp to the Site. In addition, the study concluded a daily average of ten thousand seven hundred twenty-seven (10,727) for the traffic count near the Site for the East and West bound lanes combined.

#### **C. Project Description**

The Offeror is responsible for all due diligence investigations of the leased premises, including sub-surface conditions, and all costs associated therewith, at the designated site, other than any data provided within this RFP, which shall be utilized for informational purposes only. Commonwealth of Kentucky will not be held liable for any information herein.

Offeror shall, at its sole expense, determine the best course of action for the site whether that be to demolish the existing building/structures/etc, demolish or renovate any other existing structure as determined necessary. Further, Offeror may construct a new building for a gas station/convenience store upon the leased premises, complete with related facilities and improvements to include, but not be limited to: landscaping, walkways, automobile parking, maneuvering and drive areas, and all other amenities and facilities required for the operation of a full-service gas station and convenience store. As part of the project, Offeror is responsible for completing all site work, including the extensions of underground duct systems, water, sanitary sewer, storm sewer, natural gas transmission lines, and any other utility from the utility connection point(s) designated by the Commonwealth.

This project shall be undertaken and completed by the successful Offeror, by and at its sole expense, and the project and project site shall be leased to the successful Offeror in its "as is" condition. Successful Offeror shall obtain, at its sole expense, the necessary permits, approvals, easements, and licenses necessary for the development, construction, and use of the leased premises; rezoning or conditional use permits, access permits, land divisions, building and business permits, zoning or building code variances, zoning design review, access and utility easements, any architectural, design, signage

permits or other necessary approvals. The Commonwealth will, to the extent possible, assist Offeror in obtaining the necessary governmental approvals.

If any construction or alteration of the site is proposed, the Offeror shall submit to the Kentucky Division of Engineering and Contract Administration (DECA) for the review and approval of DECA and KYTC, construction documents bearing the seal and signature of a KY licensed design professional, per the laws of KRS 322.360, 323.033, 323.095, and 323.340, prior to beginning any construction on the leased premises, as well as providing 'as built' drawings/plans to the DECA, after completion of construction, for submittal to the State plan vault.

From the date the Secretary of the Finance and Administration Cabinet executes the resulting Lease Agreement, unless prior written approval is granted by the COK, the target completion date for renovation of the site is up to four (4) months or six (6) months or less for full demolition of the structure to the slab and rebuild. If the leased premises have not been completed and the Offeror has not occupied the premises within aforesaid timeframe, then the resulting Lease Agreement will become null and void, with no rights remaining to the Offeror.

During demolition, construction, remodel, or renovation, Offeror shall provide proper receptacles for all construction debris and the trash and garbage generated by such construction activities. Offeror is responsible for removal of all waste, construction debris, refuse, garbage and rubbish generated from project activities and shall not deposit or leave same, except temporarily in connection with collection for removal, on any part of the leased premises. Offeror shall, at its sole expense provide and use suitable covered receptacles for the storing of all trash, garbage and other refuse created in the conduct of the convenience store/gas station or arising from the Offeror's exercise of any right or obligation under the resulting Agreement. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the leased premises is forbidden.

Offeror is encouraged to propose an expansion to the truck/overnight parking area at the facility as shown on Exhibit A.

General Merchandise and Fuel Services operation must be provided twenty-four (24) hours a day, three hundred sixty-five days a year.

#### D. Fuel Services

The selected Offeror must upgrade fuel facilities to current industry standards, if necessary, and provide self-service, fully automated fueling for gasoline and diesel fuel, including the "pay at the pump" technology. Air pumps for inflating tires must be located on the leased premises.

Underground Storage Tank (UST) installation, operation and removal are regulated by the Kentucky Division of Waste Management (DWM). All underground storage tanks must be registered with the DWM within 30 days of beginning use. Prior to purchasing a UST system, assess the system's condition and compliance record, and inform yourself of all operational requirements. Both installation of underground and aboveground storage tanks, as well as repairs and modifications of existing systems are permitted through the Department of Housing, Buildings and Construction, State Fire Marshal.



The existing tanks are currently listed with DWM as record AI#58767, and as of the date the lease is executed, the existing tanks will be transferred to the successful Offeror. The successful Offeror, at its sole expense, shall be responsible for inspecting, evaluating and determining whether the existing tanks are viable and may be utilized by the successful Offeror or whether the tanks must be removed and replaced, by and at the sole expense of the successful Offeror, including any and all environmental remediation, if necessary. Compliance must meet all related state, local and administrative laws pertaining to underground petroleum storage tanks.

E. General Merchandise

The selected Vendor must provide a variety of items with prices of each item clearly displayed, with no exception, on the package, the shelf with the package, or signage. Offeror is encouraged to offer Kentucky Lottery tickets, Kentucky Proud items, and Kentucky Crafted items.

F. Ohio County Tourism

The selected Offeror is required to provide a small desk and brochure rack to Ohio County Tourism in a visible location within the facility.

G. Restaurant

The vendor may, at its sole discretion and expense, submit a plan for a restaurant facility that includes the layout, business case and proposed menu for a restaurant on site. If the vendor is planning to have a restaurant facility, the vendor's proposal shall include a plan with a staffing scheme and proposed hours of operation.

H. Restrooms

Restrooms must be renovated to current Kentucky Plumbing Code without reducing the current number of fixtures. After renovation, restrooms must be open to the public twenty-four (24) hours a day, three hundred sixty-five days a year. Restrooms must be checked and cleaned regularly and repaired as necessary. Restrooms need to be designed so that they do not need to be closed entirely for cleaning. Offerors must understand busloads of citizens and other guests visit the facility from time to time with no intent of purchase and said guests must be permitted to utilize the restrooms.

I. Gated Children's Playground

The selected Offeror may, at its sole discretion and expense, offer a playground for patrons to utilize with the understanding said playground shall be up to all current playground codes.

J. Grounds Maintenance:

KYTC will mow the areas outside of the ramps and in the core areas on both the East and West sides of the Site on a schedule of three (3) cycles per year. The Vendor will be responsible for any additional mowing that they deem needs to be performed. The

Vendor will also be responsible for any landscape maintenance that is needed on the grounds.

K. Pavement Maintenance:

KYTC will maintain the pavement and adjacent shoulders of the ramps and the main throughway of the facility. The Vendor will be responsible for all other pavement areas including all parking areas for automobiles and trucks as shown on Exhibit A.

L. Housekeeping and Utilities Requirements

The selected Offeror is fully responsible, at its sole expense, for all janitorial, utility costs, and housekeeping of its leased premises.

The Offeror shall solely be responsible for all utilities for the leased premises, including placing in its own name all of the utilities connected with the leased premises. This responsibility includes, but is not limited to, obtaining all necessary easements and rights of way from the various private, local, state and federal government agencies involved, if necessary. All expenses and costs resulting from the granting and installation of such easements and rights of way will be borne by the Offeror.

The Offeror shall pay all charges for utilities (including gas, electric, water, sewer, and telephone) furnished to the Leased Premises during the term of this Lease and any extensions thereof. The Offeror shall not be responsible for the quality, quantity, interruption or failure in the supply of any utility to the Leased Premises. The Offeror shall provide reasonable access to utilities at all reasonable times.

M. Maintenance and Escrow Account Requirements

The selected Offeror is fully responsible, at its sole expense, for all maintenance of its leased premises.

In order to insure that the successful Offeror shall be sufficiently liquid to indemnify the Commonwealth against all those costs and expenses that may incur to maintain and repair the property, the successful Offeror agrees that, throughout the term of the Agreement, the successful Offeror shall deposit monthly in a demand deposit account in a Kentucky bank on the 15th business day of each month, \$1000.00, for the purpose of providing to the successful Offeror a working maintenance account. The parties agree with respect to such demand account that:

The successful Offeror may withdraw from the escrow account at any time that funds are available on the condition that the Kentucky Transportation Cabinet Secretary, or his/her designee, countersigns the check or other instrument to withdraw proceeds from the aforesaid account. The successful Offeror shall be deemed by the resulting agreement to be authorized to draw from the above account as needed for the reimbursement of maintenance expenses throughout the year, with the prior written approval of the Kentucky Transportation Cabinet Secretary, or his/her designee. Accompanying each request for reimbursement, the successful Offeror must provide legitimate estimates for repairs and/or

maintenance to the facilities with proof of payment to each of the successful Offeror's contractors.

As to the operation of the escrow deposit account, the parties hereto agree:

- (a) That the account shall be an interest bearing account and that the amounts either deposited in or accruing upon said account shall be considered a cost or an expense of maintaining the leasehold;
- (b) That the account shall be maintained jointly in the names of the Commonwealth of Kentucky, Kentucky Transportation Cabinet, Secretary or his/her designate, and successful Offeror with copies of bank statements sent to the Finance Cabinet's Division of Real Properties;
- (c) Withdrawals from the account shall be made only upon the signatures of the representatives of parties, only to reimburse the successful Offeror during each calendar year for those maintenance costs accompanied by verifiable receipts for those maintenance costs, incurred during that year as agreed to by the Commonwealth, which agreement shall not be unreasonably withheld; or to reimburse Commonwealth for maintenance costs incurred as a result of the successful Offeror's failure to perform such maintenance. Refusal by the successful Offeror to authorize a withdrawal from the account to reimburse the Commonwealth for maintenance costs incurred under this section shall constitute a material breach of this Agreement;
- (d) Fund money shall not be utilized to pay salaries, overhead, or operating expenses;
- (e) That said escrow deposit account, and the requirement for same, shall exist during the entirety of the term of the agreement and any extensions thereof;
- (f) That it is the intention of the parties that distributions shall be made from the escrow deposit account for reimbursement to the Commonwealth for all costs and expenses it shall have incurred to maintain or repair the components of the facility at the failure of the successful Offeror to perform such necessary maintenance or repair;
- (g) The successful Offeror is fully responsible for all maintenance regardless of the balance of the escrow account;
- (h) One hundred and eighty (180) days prior to the expiration of the term of the lease and any extensions thereto, and after the fulfillment of the requirements of this section, the Lessee must provide a site study with appropriate testing to be conducted by an independent third party with the Commonwealth of Kentucky listed as a beneficiary to the report to show there are no environmental hazards found on the site. If results indicate there are no environmental hazards or unfavorable structural issues with any improvement, at the time of expiration of the term of the lease and any extensions thereto, the entirety of the contents of the account shall be returned to the successful Offeror.

#### N. Signage

No sign may be erected nor shall any existing signs be renovated/remodeled by the successful Offeror on the leased premises or on any property of the Commonwealth, without the prior written consent of the Commonwealth/KYTC approving the size, design, construction specifications, location, color and message. All such signs shall be constructed at the sole cost of the successful Offeror and shall be maintained in good order and repair and insured by the successful Offeror. Offeror shall not use any advertising within the leased premises that, in the Commonwealth's sole discretion, is objectionable.

Offeror, at its expense, shall be required to install and pay for any and all necessary promotion/advertisement sign(s). Any signage or proposed highway signage and locations must be approved by the KYTC prior to installation. Maintenance of all signs will be the sole responsibility of the Offeror.

#### O. Offeror's Compliance

The Offeror, at its sole expense, shall comply with all local, state, and federal health department and environmental regulations.

#### P. Offeror's Employees

The selected Offeror shall, at its own expense, provide adequate personnel so as to provide quality services to the patrons at the Site without unreasonable delay. All employees including management must maintain a neat and orderly appearance. Personal appearance and courteous service to the patrons of the Site is deemed to be of the utmost importance to the Commonwealth.

The Offeror shall recruit, hire, train, supervise, direct, discipline and, if necessary, discharge any and all personnel working on site. All employees shall be the sole responsibility of the Offeror and not the Commonwealth of Kentucky. The Offeror will properly screen all applicants prior to employment. The Offeror is an independent contractor and will not, under any circumstances, be considered an employee, servant or agent of the Commonwealth, nor will the employees, servants or agents of the Offeror be considered employees, servants or agents of Commonwealth and neither the Offeror nor its employees, servants or agents will have any authority to bind the Commonwealth in any respect whatsoever.

The Offeror agrees to comply with all federal, state, and local laws and regulations, including but not limited to those pertaining to nondiscrimination in hiring and employment practices, and federal immigration laws pertaining to employment. Rules, regulations and laws will be displayed in a prominent place where these licenses, permits and/or regulations as required by law are to be so posted. The Offeror shall require all its employees to meet the appropriate health standards prescribed by municipal, state, and federal laws and regulations.

### IV. LEASE TERMS AND CONDITIONS

**The Commonwealth will enter into a lease of the Property, improvements and facilities on such terms and conditions that are consistent with the successful**

**Offeror's bid and as may be negotiated by the Commonwealth and the successful bidder. Said lease shall include language whereby any/all subleases associated with the premises shall require prior approval and the COK to be listed a signatory party to the sublease, and the COK shall receive the same percentage of gross receipts for the sublease as the primary lease.**

The successful Offeror will be required to keep complete and accurate financial records, pursuant to 304 KAR 1:010, and any and all other applicable laws or regulations, of all transactions, as the Commonwealth deems necessary, to adequately reflect operations relating to the Property and to maintain such additional records on any subleases, if applicable. The financial records will be subject to inspection or audit by designated representatives of the Commonwealth at all times during regular business hours and shall be made available at a convenient location for that purpose.

The successful Offeror will also be responsible to provide, promptly after the close of each fiscal year, at its own expense, an audit of its books and accounts relating to the operation of the facilities for the preceding fiscal year by an independent firm of certified public accountants of recognized ability and approved by the Kentucky Transportation Cabinet, and a copy of the audit shall be submitted to the Kentucky Transportation Cabinet no later than three (3) months after year's end.

**For an example of a typical lease agreement entered into by the Commonwealth, see sample lease agreement, attached hereto and made a part hereof.**

## **V. GENERAL PROPOSAL INFORMATION**

### **A. Approach**

The procurement process shall provide for the evaluation of Proposals and selection of the Proposal which ranks the highest in the evaluation process in accordance with state statutes and administrative regulations.

### **B. Offeror Response and Proprietary Information**

The RFP specifies the format, required information, and general content for each Proposal submitted in response to this RFP. The FAC will not disclose any portions of any Proposal prior to Lease award to anyone outside the FAC except for representatives of the FAC, representatives of the Federal Government, if required, and the members of the selection committee. After a Lease is awarded in whole or in part, the Commonwealth of Kentucky shall have the right to duplicate, use, or disclose all Proposal data submitted by Offerors in response to the RFP as a matter of public record. Although the Commonwealth of Kentucky recognizes the Offeror's possible interest in preserving selected data which may be part of a Proposal, the Commonwealth of Kentucky shall treat such information as provided by the Offeror pursuant to the Kentucky Open Records Act, KRS 61.870 et seq.

Provided the Offeror complies with the requirements of 200 KAR 5:315, informational areas which may be considered proprietary shall be limited to: individual personnel data, customer references, selected financial data, formulae, and financial audits which, if disclosed, would permit an unfair advantage to competitors. If a Proposal contains information in these areas that Offeror declares proprietary in nature and not available for

public disclosure, each sheet containing such information shall be clearly designated as proprietary at the top and bottom of the page, and shall be submitted under separate cover marked "PROPRIETARY DATA". Proposals containing information declared by an Offeror to be proprietary, either in whole or in part, outside the areas listed above, shall be deemed non-responsive to the RFP and shall be rejected.

The Commonwealth of Kentucky shall have the right to use all ideas, or adaptations of those ideas, contained in any Proposal received in response to this RFP. Selection or rejection of the Proposal shall not affect this right.

C. Proposal Addenda and Rules for Withdrawal

1. Prior to Proposal due date, an Offeror may withdraw its submitted Proposal by submitting a written request for its withdrawal to the attention of the buyer listed at the beginning of this RFP.
2. The Commonwealth of Kentucky reserves the right to request clarification or additional information. Unless requested by the Commonwealth, addenda, revisions, or alterations to the Proposal after the receipt date will not be accepted.

D. Proposal Submission Requirements

1. A qualified Offeror may submit one Proposal. The format and contents are specified in this RFP. Alternate Proposals shall not be allowed.
2. Three (3) copies of the Proposal under sealed cover shall be received no later than the date specified herein. The Commonwealth of Kentucky may reject any Proposal received after this date and time and shall return it unopened to the Offeror.
3. The Proposal shall be clear and concise and provide the Commonwealth with an understanding of the Offeror's ability to undertake and complete the proposed work in a thorough manner.
4. The Proposals shall be either mailed or hand delivered to:

Natalie W. Brawner  
Division of Real Properties  
3<sup>rd</sup> Floor – Bush Bldg.  
403 Wapping Street  
Frankfort, KY 40601

**Do not mail or hand deliver any Proposals to the Leased Site or to any other location than indicated above.**

Any Offeror's addenda to its Proposal may be submitted in a manner consistent with the requirements of this RFP (see Section C above).

E. Acceptance of Proposals

All Proposals properly submitted shall be accepted by the Commonwealth of Kentucky. However, the Commonwealth of Kentucky reserves the right to request from an Offeror necessary information which may become a part of the Offeror's Proposal; reject all Proposals; reject any Proposal that does not meet mandatory requirements; or cancel this RFP, according to the best interests of the Commonwealth of Kentucky. The

Commonwealth of Kentucky also reserves the right to waive minor irregularities in a Proposal, pursuant to applicable regulations, providing such action is in the best interest of the Commonwealth of Kentucky.

Where the Commonwealth of Kentucky may waive minor irregularities, such waiver shall in no way modify the RFP requirements or excuse the Offeror from full compliance with the RFP specifications and other Lease requirements if the Offeror is awarded the Lease.

#### F. Protest

The Secretary of the Finance and Administration Cabinet, or their designee, shall have authority to determine protests and other controversies of actual or prospective offers in connection with the solicitation or selections for award of a Lease.

Any actual or prospective Offeror, who is aggrieved in connection with solicitation or selection for award of a Lease, may file a protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly, and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices or otherwise controversies must be in writing.

The Secretary of the Finance and Administration Cabinet shall issue a decision in writing. A copy of the decision shall be mailed or otherwise furnished the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

#### G. Contractual Requirements

By submitting a Proposal, the Offeror acknowledges that it has read this RFP, understands it, and agrees to be bound by its requirements, terms and conditions, and further agrees that the Lease, as defined herein, is the complete and exclusive statement of the Lease between the parties and supersedes all Proposals, oral or written and all other communications between the parties relating to the subject matter of the Lease. The Lease, unless otherwise provided herein, can only be modified in writing, signed by the Offeror and the Commonwealth. The Commonwealth reserves the right to disqualify any Proposals which take exception to or limit the rights of the Commonwealth under the RFP and the resulting agreement.

#### H. Limitation and Liability and Remedies

The entire liability and the sole and exclusive remedies for claims related to or arising out of the Lease for any cause and regardless of the form of action whether in contract or in tort, shall be as set forth in the Lease, including all legal and equitable remedies.

IN NO EVENT SHALL THE COMMONWEALTH BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE COMMONWEALTH HAS BEEN ADVISED KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

No remedy herein conferred upon or reserved by the Commonwealth is intended to be exclusive of any other available remedy or right, but each and every such remedy or right shall be in addition to every other remedy or right given under the Lease or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or option accruing to the Commonwealth upon any default by the Offeror shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by the Commonwealth.

I. Publicity

Any use or reference to this RFP by the Offeror to promote, solicit or disseminate information regarding the scope of the Lease is prohibited, unless otherwise agreed to in writing by the Commonwealth. The Commonwealth agrees to be used as a reference by the Contractor in other Commonwealth of Kentucky competitive situations.

J. Inquiries – Restriction on Communication

The Commonwealth Buyer named below shall be the **sole point of contact** throughout the procurement process. All communications, oral and written (regular, express, or electronic mail or fax), concerning this procurement shall be addressed to:

Natalie W. Brawner  
403 Wapping Street – 3<sup>rd</sup> Floor, Bush Building  
Frankfort, KY 40601  
502-564-2111  
Fax – 502-564-8108  
E-mail – [natalie.brawner@ky.gov](mailto:natalie.brawner@ky.gov)

From the issue date of this RFP until an Offeror is selected, and the resulting lease is executed, Offerors shall not communicate with any Commonwealth staff concerning this RFP except:

- The Commonwealth Buyer (Natalie Brawner) cited in this RFP
- Commonwealth representatives during a scheduled Offerors' Conference, which shall be attended by Commonwealth buyer; or
- Via written questions submitted to the Commonwealth Buyer (Natalie Brawner)

***For violation of this provision, the Commonwealth reserves the right to reject their Proposal response.***

Any agreement or collusion among lease proposers or prospective lease proposers which restrains, tends to restrain, or is reasonably calculated to restrain competition by agreement to propose a lease with certain terms or to refrain from proposing a lease with certain terms or otherwise is prohibited.



## K. Checklist for Proposal

The Commonwealth will conduct a comprehensive evaluation of Proposals received in response to this Request for Proposals. This evaluation will be conducted, as determined by the Division of Real Properties. Items to be given specific attention during the evaluation process are as follows:

- Narrative of design intent and approach to the Project.
- Financial – including, but not limited to, the Offeror's ability to provide financial backing for the Project
- Background and relevant experience, including references
- Revenue payable by the Commonwealth

The above criteria are explained in more detail in the following segments of this Proposal section of the RFP.

THE SUCCESSFUL OFFEROR'S PROPOSAL DOCUMENTS WILL BECOME PART OF ANY FINAL LEASE AGREEMENT. ALL ITEMS LISTED MUST BE THOROUGHLY ADDRESSED IN YOUR WRITTEN PROPOSAL.

Please include **three (3)** complete copies of Proposal document and all attachments, and one electronic version of the entire Proposal.

***The following is a checklist of documentation/items that MUST be included in Offeror's response; otherwise, your Proposal will be deemed non-responsive to this solicitation:***

- ☐ 'Commonwealth of Kentucky Solicitation', completed and signed
- ☐ Deposit check—see Proposal Guaranty Section II, H
- ☐ Transmittal Letter
- ☐ Narrative of Design Intent & Required Documents, including but not limited to:
  - ☐ **Written and Graphic Description of Project**
  - ☐ **Schedule**
  - ☐ **Design/Build Team**
- ☐ Corporate Background and Experience
- ☐ Sworn Statement regarding Campaign Finances, Exhibit E
- ☐ DBE Participation Form, Exhibit F
- ☐ Financial Viability (see VI. Proposal Content and Form, Section D) along with Exhibit G (Revenue Payable to the Commonwealth)
- ☐ Affidavit, Exhibit H

☐ Vendor Report – Prior Violations pursuant to KRS 45A.485 verified by Real Properties through the Department of Labor, Exhibit I

☐ Proof of Bonding

## ***VI. PROPOSAL CONTENT AND FORM***

**(This information shall be submitted in initial response by June 30, 2017, at 10:30 A.M.)**

As listed above, the Offeror's response shall contain the following:

### **A. Transmittal Letter**

The transmittal letter shall be in the form of a standard business letter, on the Offeror's official business letterhead, and shall be signed by an individual authorized to legally bind the Offeror. This signed letter will legally bind the Offeror. It shall include:

1. A statement indicating the type of entity of the Offeror, and the ownership of such entity.
2. A statement that the Offeror is registered to do business in Kentucky or will obtain a Kentucky business license, as well as any other documents required by law and the regulations of the Commonwealth of Kentucky, prior to commencement of work.
3. A statement identifying all addenda to the RFP issued by the Commonwealth and received by the Offeror. If no addenda have been received by the Offeror, a statement to that effect should be included.
4. A statement that the Offeror's Proposal meets all requirements, provisions, specifications, terms and conditions set forth in the RFP, or in the alternative, an explanation of any deviations from such terms and conditions, specifications, requirements or provisions.
5. A statement that the Offeror's Proposal shall remain valid for ninety (90) days after the closing date for the receipt of Proposals.
6. A signed statement certifying that no personnel currently employed by, under contract with, or in any way associated with the Commonwealth have participated in any activities relating to the preparation of the Respondent's Proposal.
7. An itemization of all materials and enclosures being forwarded collectively in response to this RFP.
8. A statement that acknowledges and agrees to all of the rights of the Finance and Administration Cabinet including terms and conditions, and all other rights and terms specified in this RFP.
9. The letter shall be signed by the person with the authority to bind the Offeror, answer questions, and provide clarification concerning the Proposal.

## **B. Narrative of Design Intent/Project Approach & Required Drawings/Documents**

The Offeror shall provide a written and graphic description with a detailed schedule of the Offeror's approach to this project. The schedule shall include design, construction, and any/all plans for closure of the facility from the time of award to full operation of the facility as planned in the proposal. This section shall clearly and succinctly describe the Offeror's approach to this Project. Issues such as design intent, and coordination with and benefits to the COK, should, at a minimum, be addressed. This section should also specifically identify the composition of Offeror's proposed use of the building, the design/build team, including names of individuals working on the project. Statutes dictate these individuals must be licensed/certified in the Commonwealth of Kentucky. This section shall also identify the 'downstream' team members—the composition of the design/build team shall include, as a minimum, the architectural firm.

Within fifteen (15) days of the award of the contract, the successful Offeror shall submit for acceptance the following members of the design/build team: engineering firm, all other contractors and subcontractors to be utilized in completing the project as well as the local management personnel to oversee all aspects of the fit-up/construction/renovation of the building on a day-to-day basis.

After the award of the contract but seven (7) days prior to submitting required documents to the Commonwealth of Kentucky's Department for Housing, Buildings, and Construction, the successful Offeror shall submit all the same required drawings to the Division of Real Properties for review and approval by the Kentucky Transportation Cabinet and the Finance Administration Cabinet's Division of Engineering and Contract Administration. Said documents shall be submitted in both hard copy (3 originals) and electronic format (CD).

Ownership: The Division of Real Properties, for itself and such others as it deems appropriate, will have unlimited rights to all information and material developed and furnished to the Division of Real Properties. Unlimited rights are rights to use, duplicate, or, disclose, test data, drawings, and information, in whole or in part in any manner and for any purpose whatsoever without compensation to or approval from the Respondent. All text, electronic digital files, data and other products generated shall become the property of the Division of Real Properties.

## **C. Corporate Background and Experience**

The corporate background and experience section shall include from the Offeror: details of the background of the Offeror, date established, ownership (public company, partnership, subsidiary, etc.), company resources, and details of company experience with ownership, management, construction/renovation or operation of operations relevant to the proposed project. List current or past similar construction/renovation of building projects, developed/constructed/managed by the company, if any. (Note: if the Proposal is submitted by an individual, the same type of information will be required.)

Should the Proposal be submitted by a non-builder, a corporation or business venture formed solely for the purpose of responding to this RFP, the above information shall be submitted for each individual within the said corporation, business venture or partnership.

#### **D. Financial\***

Offerors must provide evidence that the completion of its proposed project (including design and construction) will be financially viable to its organization or team. The Offeror shall provide:

1. Corporations – Audited Balance Sheet and Income Statement, Cash Flows (prior 5 years), Off-Balance Sheet Liabilities  
Individuals – Tax returns for prior 5 years, FICO credit score from 3 credit bureaus and details (terms of loan) on all outstanding debt.
2. List of Representative Material Changes
  - A. An event of default or bankruptcy involving the affected entity, or the parent corporation of the affected entity;
  - B. A change in tangible net worth of 10% of shareholder equity;
  - C. A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity or parent corporation of the affected entity;
  - D. A change in credit rating for the affected entity or parent corporation of the affected entity.
  - E. Inability to meet material conditions of loan or debt covenants by the affected entity or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;
  - F. In the current and five (5) most recent completed fiscal years, the affected entity or the parent corporation of the affected entity either: (i) incurs a net operating loss; (ii) sustains charges exceeding 5% of the then shareholder equity due to claims, changes in accounting policies directed charges to equity, write-offs or business restructuring; or (iii) implements a restructuring/reduction in labor force exceeding 200 positions or involves the disposition of assets exceeding 10% of the then shareholder equity;
  - G. Contingent liabilities disclosed in the notes to the financial statements;
  - H. Other events known to the affected entity which represents a material change in financial condition over the past five (5) years, or may be pending for the next reporting period.
3. Bank references for the Offeror shall be provided, including name, address, and current telephone number of the given financial institution. This should include a signed authorization for release of financial information from each bank listed.
4. Except for governmental agencies, provide the names, addresses, and telephone numbers of at least two commercial or institutional credit references from which

the Offeror has previously obtained financing. Attach a letter authorizing each credit reference to respond to inquiries from the government.

5. A description of the proposed financing plan for the first three years, including, but not limited to, source of credit, terms of credit, and repayment schedule. Source of credit will identify credit for construction, as well as long-term financing of the structures.
6. Provide a preliminary budget, projected cash flow, estimated operating costs, and detailed plans of financing including identity of proposed lenders. Identify all interim and permanent sources of funds and include copies of loan documents used to implement the assignment.
7. Provide an annual estimated gross income from operations.

\*The outside cover of the package containing the above "Financial" data submittal shall be marked as **CONFIDENTIAL**.

**PROPOSALS SHALL BE EITHER MAILED OR DELIVERED BY June 30, 2017, at 10:30 A.M. TO:**

Natalie W. Brawner, Division of Real Properties  
Finance and Administration Cabinet  
3<sup>rd</sup> Floor – Bush Building  
403 Wapping Street  
Frankfort, Kentucky 40601

The outside cover of the package containing **Three (3)** copies of the Offeror's Proposal shall be marked:

**Commonwealth of Kentucky  
BEAVER DAM SERVICE AREA  
approximately 9+- acres  
OPERATION OF GENERAL MERCHANDISE AND  
FUEL SERVICE FACILITIES  
OFF WENDELL H. FORD WESTERN KENTUCKY PARKWAY**

**RFP#063017**

[Name of Offeror]

## VII. SCORING AND PROJECT AWARD

The Commonwealth reserves the right to ask any Offeror for clarification, and/or additional information, as may be required to carry out the evaluation process. The evaluation criteria is as follows:

Offeror must Pass all Mandatory Requirements which will be scored on a Pass/Fail basis. If a Offeror does not meet all Mandatory Requirements, said Offeror will receive a Fail and shall not be evaluated further.

### **Mandatory Requirements:**

1. The Office of Financial Management within the Finance and Administration Cabinet reviews and concludes a "Pass" score concerning the financial viability of Offeror pursuant to the PROPOSAL CONTENT AND FORM, Financial Section of this RFP.
2. The Division of Engineering and Contract Administration within the Finance and Administration Cabinet reviews and concludes a "Pass" score pursuant to the PROPOSAL CONTENT AND FORM, Narrative of Design Intent/Project Approach Section of this RFP.

If the Offeror Passes the Mandatory Requirements, said Offeror shall be evaluated as follows:

The resulting Lease Agreement shall be awarded for the fit-up/renovation or construction and lease/occupancy of the Site based on the highest score of the responsible, responsive Offeror, whose offer conforming to this RFP is most advantageous to the Commonwealth, based on the criteria below. The Division of Real Properties reserves the right to reject any and all Proposals and to waive technicalities.

**The Offeror, whose Proposal has the highest percent of gross receipts for the convenience store operation (not including the monthly maintenance fee of \$1000.00), payable to the Commonwealth, will be awarded 50 points. This score will be calculated by the Commonwealth Buyer. The Offeror with the next highest rentals will be awarded points as in the example below.**

### **(Example only):**

**Highest Rent:**      *10% of gross receipts per month = 50 points*  
**Next Highest:**      *8% of gross receipts per month = .08/.10 X 50 points = 40 points*  
**Next Highest:**      *5% of gross receipts per month = 5/10 X 50 = 25 points*

**The successful Offeror will be subject to one-half (1/2%) percent increase in gross receipts in the following years:**

Years 1-5 = no increase  
Years 6-10 = Bid amount (% of gross receipts) + one-half percent (1/2%)  
Years 11-15 = Bid amount (% of gross receipts) + one percent (1%)  
Years 16-20 = Bid amount (% of gross receipts) + one and a half percent (1 ½ %)  
Years 21-25 (if extended) = Bid amount (% of gross receipts) + two percent (2 %)  
Years 26-30 (if extended) = Bid amount (% of gross receipts) + two and one-half percent (2 1/2 %)

**The Offeror, whose Proposal has the highest price per gallon (including gasoline and diesel) for fuel operations, payable to the Commonwealth, will be awarded 20 points. This score will be calculated by the Commonwealth Buyer.**

**Additional Points:**

1. Overall Site Design – a maximum of 25 points
2. Twenty (20) additional points will be given for a full demolition of the current convenience store building to at least the slab and rebuild of building
3. Corporate Background and Experience – a maximum of 25 points
4. Ten (10) additional points will be given to Offerors submitting a Proposal that includes expansion of the parking area(s) as shown on Exhibit A for a minimum of fifteen (15) additional eighteen-wheel truck parking spots.

**Maximum Total Points: 150**

## **VIII: EXHIBITS**

EXHIBIT A	Building and Lot – Site/Leased Premises
EXHIBIT B	Phase I Environmental Site Assessment Report and Appendix C-E
EXHIBIT C	Historic Financial Information
EXHIBIT D	Sample Lease
EXHIBIT E	Sworn Statement Regarding Campaign Finance Laws
EXHIBIT F	Disadvantaged Business Enterprise Participation Form
EXHIBIT G	Revenue Payable to Commonwealth—to be submitted with Financial Information
EXHIBIT H	Affidavit
EXHIBIT I	Vendor Report of Prior Violations

For hard copy of RFP or any of the attachments, please contact:

Natalie W. Brawner  
Division of Real Properties  
[Natalie.brawner@ky.gov](mailto:Natalie.brawner@ky.gov)  
502-564-2111

**END OF RFP#063017**